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SENATE BILL 37

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Clinton D. Harden

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO TORT CLAIMS; PROVIDING IMMUNITY FROM TORT LIABILITY  
FOR CERTAIN ENTITIES ENGAGING IN SPACE FLIGHT ACTIVITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Space Flight Liability and Immunity Act".

Section 2. LEGISLATIVE FINDINGS AND PURPOSE.--The  
legislature finds that:

A. the commercial human space flight industry is an  
emerging and important industry, and private industry has begun  
to develop vehicles capable of carrying human beings into  
space. New Mexico and its residents will gain significant  
economic and personal benefits from the development of a  
successful and robust commercial human space flight industry,  
while playing a significant role in its growth. The

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1 development of the spaceport will create jobs and have a  
2 positive effect on the state's tax base;

3 B. commercial human space flight activities involve  
4 inherent risks that cannot be eliminated or controlled through  
5 the exercise of reasonable care and that justify the  
6 exculpation of ordinary negligence, and that these inherent  
7 risks provide the challenge and excitement that entice space  
8 flight participants to participate in these activities;

9 C. space flight participants should be informed of  
10 the risks inherent in space flight activities that cannot be  
11 completely eliminated and should accept responsibility for the  
12 inherent risks of participating in space flight activities; and

13 D. the purpose of the Space Flight Liability and  
14 Immunity Act is to permit the use of waivers and releases of  
15 liability for space flight entities that will exculpate them  
16 from the inherent risks of space flight activities and their  
17 negligence.

18 Section 3. DEFINITIONS.--As used in the Space Flight  
19 Liability and Immunity Act:

20 A. "participant" means a space flight participant  
21 as that term is defined in 49 U.S.C. Section 70102;

22 B. "participant injury" means an injury sustained  
23 by a participant, including bodily injury, death, emotional  
24 injury or property damage;

25 C. "space flight activities" means launch services

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1 or reentry services as those terms are defined in 49 U.S.C.  
2 Section 70102; and

3 D. "space flight entity" means any public or  
4 private entity holding, either directly or through a corporate  
5 subsidiary or parent, a license, permit or other authorization  
6 issued by the United States federal aviation administration  
7 pursuant to the federal Commercial Space Launch Amendments Act  
8 of 2004, including, but not limited to, a safety approval and a  
9 payload determination. "Space flight entity" includes any  
10 manufacturer or supplier of components, services or vehicles  
11 that have been reviewed by the United States federal aviation  
12 administration as part of issuing such a license, permit or  
13 authorization.

14 Section 4. CIVIL IMMUNITY FOR SPACE FLIGHT ENTITIES.--

15 A. Except as provided in Subsection C of this  
16 section, a space flight entity is not liable for a participant  
17 injury resulting from the risks of space flight activities;  
18 provided that:

19 (1) the participant has been informed of the  
20 risks of space flight activities as required by the Space  
21 Flight Liability and Immunity Act and by federal law; and

22 (2) the participant has given informed consent  
23 that the participant is voluntarily participating in space  
24 flight activities after having been informed of the risks of  
25 those activities as required by the Space Flight Liability and

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1 Immunity Act and by federal law.

2 B. Except as provided in Subsection C of this  
3 section, no participant, participant's representative,  
4 including the heirs, administrators, executors, assignees, next  
5 of kin and estate of the participant, or any other person who  
6 attempts to bring a claim on behalf of the participant for a  
7 participant injury may bring or maintain an action against or  
8 recover from a space flight entity for a participant injury  
9 that resulted from the risks of space flight activities.

10 C. Nothing in Subsection A or B of this section  
11 shall prevent or limit the liability of a space flight entity  
12 if the space flight entity:

13 (1) commits an act or omission that  
14 constitutes gross negligence evidencing willful or wanton  
15 disregard for the safety of a participant and that act or  
16 omission proximately causes a participant injury; or

17 (2) intentionally causes a participant injury.

18 D. Any limitation on legal liability afforded by  
19 this section to a space flight entity is in addition to any  
20 other limitations of legal liability otherwise provided by law.

21 Section 5. WARNING REQUIRED.--

22 A. A space flight entity providing space flight  
23 activities to a participant shall have each participant sign  
24 the warning statement that shall contain, at a minimum and in  
25 addition to any language required by federal law, the following

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1 statement:

2 "WARNING AND ACKNOWLEDGMENT: I understand and acknowledge  
3 that, under New Mexico law, there is no civil liability  
4 for bodily injury, including death, emotional injury or  
5 property damage, sustained by a participant in space  
6 flight activities provided by a space flight entity if  
7 such injury or damage results from the risks of the space  
8 flight activity. I have given my informed consent to  
9 participate in space flight activities after receiving a  
10 description of the risks of space flight activities as  
11 required by federal law pursuant to 49 U.S.C. Section  
12 70105 and 14 C.F.R. Section 460.45. The consent that  
13 I have given acknowledges that the risks of space flight  
14 activities include, but are not limited to, risks of  
15 bodily injury, including death, emotional injury and  
16 property damage. I understand and acknowledge that I am  
17 participating in space flight activities at my own risk.  
18 I have been given the opportunity to consult with an  
19 attorney before signing this statement."

20 B. Failure to comply with the requirements  
21 concerning the warning statement provided in this section shall  
22 prevent a space flight entity from invoking the privileges of  
23 immunity provided by the Space Flight Liability and Immunity  
24 Act.